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Attorneys for Defendants New York Life Insurance Company and New York Life Insurance and Annuity Corporation

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

OLGA ORTMANN, as an individual
and on behalf of all others similarly
situated.

Plaintiff.

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NEW YORK LIFE INSURANCE COMPANY, a corporation; NEW YORK LIFE INSURANCE AND ANNUITY CORPORATION, a corporation; and DOES 1 through 20, inclusive.

Defendants.

Case No. 3:07-CV-02506-WHA

**DECLARATION OF JILL A.
PORCARO IN SUPPORT OF
DEFENDANTS' MOTION TO STAY
OR TRANSFER THIS ACTION, OR,
IN THE ALTERNATIVE, TO
DISMISS PLAINTIFF'S SECOND,
FOURTH, AND SIXTH THROUGH
TWELFTH CAUSES OF ACTION
PURSUANT TO THE "FIRST-TO-
FILE" RULE**

Judge: Hon. William Alsup
Date: July 5, 2007
Time: 8:00 a.m.
Courtroom: 9, 19th Floor

DECLARATION OF JILL A. PORCARO

I Jill Ann Porcaro declare as follows:

1. I am an attorney licensed to practice law before all courts in the State of California and I am admitted to practice in this Court. I am an associate with Morgan, Lewis & Bockius LLP, attorneys for Defendants New York Life Insurance Company and New York Life Insurance and Annuity Corporation (“Defendants”) in this action brought by Plaintiff Olga Ortmann (“Ortmann”). I have personal knowledge of the following facts and could and would testify competently if called to do so.

2. Attached hereto as Exhibit "A" is a true and correct copy of the Complaint filed on or about December 11, 2006, in the matter of: *Justin Opyrchal v. New York Life Insurance Company, Inc., New York Life and Heal Insurance Company, Inc., New York Life Insurance and Annuity Corporation, Inc.*, Case No. BC363208, in the Superior Court for the State of California, County of Los Angeles (hereinafter referred to as the "Opyrchal Action").

3. Defendants removed the *Opyrchal* Action to the U.S. District Court for the Central District of California on January 22, 2007. Attached hereto as Exhibit "B" is a true and correct copy of the Notice of Removal filed in the *Opyrchal* Action.

4. On April 13, 2007, the Central District Court, Judge Valerie Baker-Fairbank Presiding, dismissed Opyrchal's prayer for punitive damages, injunctive relief, and disgorgement of profits pursuant to Defendants' Motion to Strike. A true and correct copy of the Court's Order is attached hereto as Exhibit "C."

5. Plaintiff Justin Opyrchal filed a first Amended Complaint in the *Opyrchal* Action on or about May 11, 2007. A true and correct copy of the First Amended Complaint filed in the *Opyrchal* Action is attached hereto as Exhibit "D".

6. On or about March 26, 2006, Plaintiff Ortmann filed this action in Superior Court for the State of California, for the County of Alameda, Case No.

1 07317476 (hereinafter referred to as the "*Ortmann Action*"). Attached hereto as
2 Exhibit "E" is a true and correct copy of the Complaint filed by Plaintiff Ortmann.

3 7. On May 10, 2007, Defendants removed the *Ortmann Action* to the
4 United States District Court for the Northern District of California, Case No. 3:07-
5 CV-02506.

6 I declare the foregoing is true and correct under penalty of perjury of the laws
7 of the United States and the State of California.

8 Executed this 24th day of May, 2007, in Los Angeles, California.

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10 By /s/ JILL A. PORCARO
11 Jill A. Porcaro

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